

New EU Organic Regulation – Changes for ICS

On the 15th of February 2022, Naturland e.V. conducted an online seminar introducing and discussing the new regulatory requirements for group certification as a response to the newly enforced **EU Organic Regulation 2018/848**. Anke Pauler from Ecocert S.A. introduced the new requirements for group certification and Dr. Hubby Mathew shared some best practice management of ICS in India. Below is a summary of the key points of the presentations followed by the Q&A section.

Introduction to the new EU organic regulations by Anke Pauler – Ecocert S.A.

The EU organic regulation 2018/848 and associated acts form the framework for imports of organic products to the European Union. The regulations have been revised in 2018 and came into force in January 2022. Operators exporting to the EU need to attain their **compliance certificate** latest until **31st of December 2024**.

Overview of the main changes

The new regulation sets new requirements for **group composition**, **eligibility** of group members, **external inspection**, and **detailed documentation**.

Details of the main changes and challenges for implementation

The main changes were further explained in detail and resulting challenges for implementation were discussed.

Internal control system regulations in India by Dr. Hubby Mathew

The national legislation of India (NPOP) shows some similarities to the group certification requirements now imposed by the EU organic regulation. Therefore, best practice management of ICS in India was introduced as an example how ICS in other regions may adapt to the new requirements of the EU organic regulation, e.g. with regard to limitation of group size. **However, it is important to note that there are also differences between NPOP legislation and EU legislation and compliance must be ensured with the applicable regulation accordingly (NPOP for India, EU organic for all other countries).**

Introduction to the structure of ICS and its development in India

The general structure of ICS including legal structure and organigram were introduced, followed by the steps and important aspects of developing an ICS.

Regulations and responsibilities of ICS in India

The composition of ICS in India was explained and compared to the new EU regulations, stressing similar aspects. The responsibilities and tasks of ICS staff, the structure of field management and the documents required on farm level also play an important role and were therefore introduced.

Challenges met by ICS

The common challenges for ICS in India were discussed.

Questions from the audience

Size of groups

Q: Can several people, friends, family register one field together with less than five hectares? Can they register as one member to avoid being more than 2000 members and requiring to create a new entity? It's trying to find a way to avoid registering more than one group.

A: In an approach of an ICS, you will not count one member as one member if you know there are three or four members behind that actually. How will you do the internal inspection then? The proper approach to me would be to have one member on paper, that has rental contracts with other family members where it is written, that they rent e.g., two hectares from the other. The other way around, these members who rent their plots to the member, participate in the turnover afterwards. But it needs to be properly set up also for the ICS. It is very important that traceability is always ensured so it must be very clear who is the owner of the field, who manages the field and so on. If just some people register for one field, it may also become unclear from where the product is sold, how much is harvested, and so on. So, the traceability must be ensured.

Q: How did you come up with the figure of 2000 farmers per group?

A: The EU commission has fixed this 2000-member level per group. It's what they laid out as a limit.

Q: Is there some way a reasoning why it's 2000 members per group? And was there a risk and that's why they had to limit it? Is there some official statement?

A: There is no official statement. From what I know, the Commission has been supplied the figures on the average size of the groups. I cannot give you a detailed reason.

Q: Is it okay to have a bigger group but smaller ICS? We have groups in Papua New Guinea who have 6000 members but three separated ICS for 2000 farmers each. The export management is one big group. Would this be acceptable?

A: No, as far as I understood you, because every group needs to have their own legal personality.

Q: In India there is a maximum of 500 members in one ICS. So can four ICS, which means 2000 farmers, register as one member?

A: For production in India a different regulation, the NPOP, is applied at national level. This question is very specific to India's NPOP regulation. I cannot really answer your question on the implementation of these limits concerning the new EU regulation. For EU compliance, one certificate, 2000 members subject to certification and one legal personality is needed.

Q: There is an organization that has maybe 6000 farmers which will split now into three organizations. Those three groups need to have a separate legal personality. Now this organization that has 6000 farmers is say, a cooperative. It has its name and registration criteria and is holding an export license. Now in a situation where we split into smaller groups which are required to have a separate legal entity, how will the big organization sell the products of the smaller groups in the case of export because the export license is in the name of the bigger organization.

A: I understand that only the exporter holds the export license to export a certain product and it's not easy for these subgroups of 2000 in the future to obtain such an export license. In that case the members need to sell their products to the legal personality of the 2000 members and then the group needs to sell to the exporter that holds the export license. There will be a step in between in the future in order to comply with the regulation requirements. It will be like an export process because the exporter does not belong to the group anymore but is a separate legal personality.

Q: What is the minimum number of members to develop an ICS?

A: There's no minimum number defined in the regulation, but it depends of course on the feasibility. Only if you have enough members, it is feasible to have an ICS because ICS management also costs money, it needs qualified staff, it needs a documentation. So only if you have enough farmers, it makes sense to have a group certification, but there's no minimum number defined in the regulation.

Legal personality

Q: Is the "legal personality" somehow affiliated with the structure of the ICS?

A: No, it's simply that the group that holds the certificate at the end needs to have a legal personality (Cooperative, Ltd., etc.) proven by a trade register, etc. Under this certificate only 2000 members subject to certification can be covered.

Q: If we have several farmer groups with a maximum number of, let's say 2000 farmers, according to the new requirement. Then they each have a separate legal entity and they have a separate certificate. But they want to export with the same export company, and they want to have a common marketing or export of the products. Is that possible?

A: This is possible, but it needs to be newly structured. Each group of a maximum of 2000 farmers must have a separate legal entity and receive a separate certificate, but there's still options to have common marketing, sell to the same exporter or sell products together.

Q: Currently a farmer group is organized under the legal personality of a processor and the group does not have an own legal personality. Is this allowed in the new regulation?

A: You need to check if the group itself, sometimes that's the case, already has its own legal personality. Then it's just a formal part to be issued a separate organic certificate for that. But if indeed the farmers are not part of a group of a cooperative, for example, then yes, a new legal personality needs to be set

up. If the only link of the farmers is between the farmers and the processor and the farmers having a supplying contract to the processor, then this is not enough. A group needs to be established that complies with the new regulation.

Q: Can a group have sub-ICS?

A: I would say it is possible to organize more than one group with each of them a separate legal entity and certificate to have a joint ICS management and to sell to the same export company or whatever. Even if the group has a maximum of 2000 farmers, the 2000 farmers can be split into smaller groups. This is possible.

Q: There's no definition of a legal entity which allows the processor to hold an individual processing certificate and to hold a production certificate as a group entity. So, if I understand it correctly the processor cannot hold both a processing and a production certificate.

A: In the new requirements the organic certificate can be issued for production AND processing only if the processing is done on individual member level. The certificate for production must be issued to farmers in case of a group certificate. Then if there's a big processing company, it cannot hold a certificate for production.

Q: This is experience from Papua New Guinea. A processor exporter will in most cases have a close relationship with the grower group that supplies the coffee. At the moment there's a couple of exceptions to that. The processor exporter will have a processing certificate and we'll also have a grower group certificate, separating the legal entities. In other words, instead of there being one certificate, the new regulations will say that there will have to be two certificates, one for the processor and one for the grower group. Now my question is concerning the relationship between the processor exporter and the grower group. Are there any restrictions on that? Obviously, at the moment, the processor exporter provides a degree of governance, oversight, support, perhaps recruitment, those types of things for the grower group and there's probably a contractual arrangement between the grower group and the processor. Can those types of relationships continue? The two certificates will be separated from EU perspective but can there still be that close operating governance and support that's provided? Can that continue?

A: I think it impacts many of the structures we have today that need to be adapted, but the regulation in itself does not point out how especially the contractual relationships should be set up between the group and the processor in the future. From an operative point of view there are possibilities to subcontract or outsource ICS or parts of the ICS, but in terms of relationship, if that covers what you just meant, to have an influence on staff selection, employment or similar, that is still possible. It's not explicitly regulated by the regulation. There's nothing excluded, but nothing included explicitly. It's not sort of a problem to subcontract parts or a whole ICS in order to maintain a running system.

Q: I'm from India and we run an ICS in our company and have contracts with a certain number of farmers for organic production and we also have contracts with organic certified processor and exporter. This is the structure running for the last 4-5 years. We are already organic certified, so can we continue in this structure or are any changes required?

A: If the farmers are registered as a farmer group with a legal personality it should be ok. But you can always check with your control body because the NPOP also apply.

Q: Can the same ISC management be applied to the farmers and the processors?

A: It seems fine, but you should confirm with the control body.

Q: There are 2000 members registered as organic growers under the legal umbrella of an institution. Here in this institution, there are non-organic growers as well who are part of that particular legal entity of farmers. Is this acceptable or do the 2000 organic growers need to form a separate legal entity?

A: It is acceptable as long as the number of organic growers is not more than 2000 and the group is registered as a legal entity.

Q: What if the client has registered the group of farmers under the name of the processor. Our certificate at present is under the name of the processor including the group of farmers. In this case are we going to have a separate certification of the processor/exporter and another certificate for the producer?

A: Yes, the group needs to be registered with a legal personality and will get a certificate for production, the processor will get a certificate for processing/export.

Q: My company has an ICS developed. We have contracts with a certain number of farmers who all are organic certified. We also have contracts with organic processors/exporters. So will this structure be applicable or are changes required?

A: The farmers need to be organized as a group with a legal entity to receive a certificate for production. The processor/exporter will receive the certificate for processing. The registered farmer group can sell the products to the processor.

Internal inspections

Q: Internal inspection has to be done 100% so this has to be done per season? Like in India we have Rabi crops and Kharif crops so it should be done for both the seasons?

A: No, only one inspection per calendar year is needed even if you manage the crops in two seasons.

Q: I have one question regarding the inspection interval because I have seen we have to do internal inspection during each three months. So, I would like to know if this is compulsory or not?

A: It's for NPOP, this is not a requirement of the new EU regulation. It's a misunderstanding. The new regulation says at least 100% internal inspection once a year.

Sampling

Q: Do we mix samples or send them individually?

A: I can only speak for Ecocert, each control body will need to find its own approach on that. But I can say in general of course it makes sense not to individually analyze the samples taken from each member but to mix samples up to a certain limited number and do composite sample analysis.

Product registration

Q: As the new regulation set one member can register for one new product in one group. Now we have many members who grow several products in one layer of certified land, many spices. How can they sell their products?

A: They can register all the products for one and the same group. It's not a problem.

Q: If a client registers a group of farmers and they do intercropping, they cannot register all products?

A: Yes, they can. It is possible for the farmer to register many products in one group. The only thing that it is not possible is to register in separate groups for the same product. So, the farmer cannot register for coffee in one group and for coffee in another group. He can register for coffee and for banana and for cocoa and for ginger or whatever in one group.

Eligibility

Q: What to do with farmers in the group who have more than five hectares?

A: If the farm is bigger than **five** hectares, you should see what the annual **organic** turnover of the member is. If it is less than 25 000€, see if the individual certification cost is more than 500€. The 500€ equal 2% of the maximum organic turnover 25 000€ per year. If the individual certification cost is more than 500€, the member is eligible.

If the annual organic turnover of the member is more than 25 000€, see if the maximum standard output of organic production is less than 15 000€ per year. If it is less, the member is eligible. If it is more, the member is not eligible.

Q: I cannot find the definition of organic turnover versus standard output of production.

A: The organic turnover is calculated by multiplying the annual total yield of your organic product in kg with its price per kg (yield in kg*price per kg). In the EU, the standard output of an agricultural product is the average monetary value of the agricultural output at farm-gate price in euro per hectare or per head of livestock. There are figures for standard output of production in Europe, e.g. for wheat. But this is not available for all products worldwide. You can also go to the Euro stat homepage (<https://ec.europa.eu/eurostat/web/agriculture/data/ancillary-data>) where there's the definition of standard output of production as well as some data.

Q: A lot of the producers in Africa have conventional buyers of their products now. But a lot of those who demand their products want organic products and hence I request farmers to do organic production. Now, if you ask the farmer to carry his farm's individual certification cost, it's kind of demotivating because he can get an alternative buyer who is a conventional buyer without paying the certification cost. And therefore, this kind of defeats the purpose. The buyers want to see our people engage in organic farming and as such assist them in the certification, but if we single them out via the EU regulation it's difficult because a lot of these farmers are not educated, they are villagers and do have income to those levels. They can easily get an alternative buyer, avoiding the additional costs for certification and the whole procedure of ICS development. In that regard, how do we go about it?

A: I completely understand your point. I mean, I can just say that's what's fixed in in the new regulation and I can just add again that. The criteria are limited to 25 000€ organic turnover. It does not cover the conventional turnover, so it's just calculating the organic sales.

Q: Does the turnover need to be calculated for each farmer in the group?

A: No, the criteria can be individually applied. One member can meet the size criteria and another the organic turnover. The ICS manager is responsible to ensure the eligibility of the members.

Q: If the farmers have more turnover. So more than 25 000€, can we continue the group with keeping them outside of the group?

A: If the turnover is exceeded then the farmer cannot be a member of the group. He needs individual certification but also only the organic turnover is relevant, not all turnover he makes with any product, but only the organic turnover.

Q: Any farmer having an area greater than 5 hectares and turnover beyond 25 000€ because of good yield in a particular year, will this farmer still remain part of the grower group or will he be out of the group in next year or excluded from the group in the same year?

A: Any farmer with more than 5 hectares and whose turnover goes beyond 25 000€ needs to be certified individually, they cannot be certified as a member of the group. This is required from the moment that the group is certified compliant to the new regulation (at the latest after 31.12.2024).

Cost

Q: What will be the farmer group certification cost?

A: This is very difficult to answer because the certification cost depends on your products and on the inspection, the number of inspection days, on your control body and so on. If you have a very large group and the number of re-inspections increase, is it likely that the cost also increases. If you need to do some restructuring, it's also possible that the cost increases, but we cannot give you any explanation on costs in here because it's very individual. That is explicitly something that should be clarified with the control body.

Questions for Dr. Hubby Mathew and on Indian Regulations

Q: We have 500 farmers per group in India, who each receive a separate certificate. My question is, as per the EU regulation can we involve 2000 farmers in a group now?

A: No, you need to comply with NPOP in India. As long as national regulations limit the number of farmers to 500 per group you need to comply with it. As for other countries the limit is the EU regulation.

Q: What type of legal personalities are considered compliant by APEDA in India?

A: Mainly in India in every district there is a societies registration office. Most of the ICS, as far as I know, are registered with the society's registration act. In every district there is a society registrar, and we submit all the application forms there to get registered. Every year this is renewed in the same office and in India there is another option that farmer cooperatives also can be registered.

Q: You mentioned that farmers with more than four hectares are annually audited. What is the difference between annual internal inspection and annual auditing of the growers who own 4 hectares landholding?

A: Usually this inspection is also done together with the annual inspection. When the control body comes certifying, they do both the inspections together and they make sure that all those who have more than four hectares acres are inspected without any fail.

Q: How is it possible to inspect 500 farmers in every three months by one internal inspector?

A: It is not by one internal inspector, there could be four inspectors, five inspectors, six inspectors. It's depending upon the number of the farmers in one ICS. So, if there are ten internal inspectors, it is possible. One inspector cannot have more than 50 farmers, there is another rule also.



Q: How will changes in EU regulation affect organic certification in Indian scenarios?

A: The important thing in India is you need to comply with APEDA requirements and with NPOP regulations. As far as I'm informed is that NPOP also continues to be considered equivalent to the EU regulation. So, the first rule for Indian operators is to comply with NPOP. In the new regulation there's a part, until when equivalent countries with equivalency guarantees will also need to adapt their regulations, but if I remember it correctly it's quite long, until 2026. I think you can also confirm this with your certification body in India, it's the easiest way I think.